

E-FILED on 4/23/12

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

NGUESSAN YAO,  
Defendant,  
THE REPUBLIC OF COTE D'IVOIRE,  
Claimant.

No. CR 10-0434 RMW

ORDER GRANTING PETITION FOR  
ANCILLARY PROCEEDINGS AND  
DETERMINATION OF LACK OF  
FORFEITABILITY

[Re Docket No. 104]

On January 10, 2012, the court entered a preliminary order of forfeiture in the instant action pertaining to \$1,961,515 in funds (the "funds") allegedly seized from Jean Ghislain Ahouyi Ngbichi on September 10, 2010 in Washington, D.C. *See* Dkt. No. 99. Pursuant to the court's order, on January 12, 2012, the government published a notice of its intent to dispose of the funds. *See* Dkt. No. 102. The notice instructed any person claiming an interest in the funds to file a petition within sixty (60) days of the initial publication of the notice. *Id.*, Attachment 1.

On March 9, 2012, the Republic of Cote D'Ivoire ("claimant") filed a petition for ancillary proceedings and determination of lack of forfeitability of the funds. *See* Dkt. No. 104. According to claimant, the funds are neither the instrumentality nor proceeds of criminal activity, but rather

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1 governmental property acquired through "ordinary government activities." *Id.* Claimant further  
2 alleges that the funds were seized from its bank account in New York, not the address in  
3 Washington, D.C. provided in the information. *Id.*

4 Under 21 U.S.C. § 853(n), a third-party may assert an interest in property subject to  
5 forfeiture by filing a petition with the court. *See also* Fed. R. Crim. P. 32.2(c). On motion, the  
6 court may dismiss the petition for lack of standing, failure to state a claim or "any other lawful  
7 reason." Fed. R. Crim. P. 32.2(c)(1)(A). Where no motion is submitted challenging the petition, the  
8 court must hold an ancillary hearing to adjudicate the validity of the claimant's alleged interest in the  
9 property. *See id.*; *United States v. Close*, 2006 U.S. Dist. LEXIS 2655, at \*7-8 (D. Idaho Jan. 12,  
10 2006).

11 At the ancillary proceeding, the court must consider relevant portions of the record of the  
12 criminal case that resulted in the forfeiture order, as well as evidence and witness testimony  
13 presented by both the United States and the claimant. *See* 21 U.S.C. § 853(n)(5). If the claimant  
14 establishes by a preponderance of the evidence that it: (1) had a vested or superior right, title, or  
15 interest in the property when the defendant committed the acts giving rise to the forfeiture, or (2) is a  
16 bona fide purchaser for value of the right, title, or interest in the property and at the time of the  
17 purchase was reasonably without cause to believe the property was subject to forfeiture, the court  
18 must amend the order of forfeiture to accommodate that interest. *United States v. Lazarenko*, 476  
19 F.3d 642, 648 (9th Cir. 2007) (citing 21 U.S.C. § 853(n)(6)).

20 Given that the United States did not submit a motion opposing claimant's petition within the  
21 time required by the local rules, the court will hold an ancillary hearing to determine the validity of  
22 the claimed interest in the funds. Claimant must contact courtroom deputy Jackie Garcia at  
23 408-535-5375 to set a hearing date. The parties are also ordered to submit exhibit and witness lists  
24 to the court no less than ten (10) days before the hearing.

25 It is so ordered.

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**United States District Court**  
For the Northern District of California

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DATED: April 23, 2012

*Ronald M. Whyte*

RONALD M. WHYTE  
United States District Judge